

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202-4423

Plaintiff,

CASE NO:

v.

Duke Energy Indiana, LLC
1000 East Main Street
Plainfield, IN, 46168

Defendant.

COMPLAINT

Plaintiff CSX Transportation, Inc., by and through its attorneys, files this Complaint against defendant, Duke Energy Indiana, LLC and in support thereof, avers as follows:

PARTIES

1. Plaintiff, CSX Transportation, Inc. (“CSX”) is a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business in Jacksonville, Florida.

2. Defendant, Duke Energy Indiana, LLC (“Duke”) is a limited liability company organized under the laws of the state of Indiana, with its principal place of business in Plainfield, Indiana. Cinergy Corp., a Delaware corporation with its principal place of business in Cincinnati, Ohio, is the sole member of Duke.

JURISDICTION

3. Jurisdiction is based upon 28 U.S.C. § 1332 as plaintiff and defendants are citizens of different states, and the amount at issue exceeds jurisdictional requirements.

VENUE

4. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the plaintiff's claims occurred in this judicial district.

PREDICATE FACTS

5. Duke is an electric power holding company providing electricity to customers in North Carolina, South Carolina, Ohio, Kentucky, Tennessee, and Indiana.

6. Duke owns, possesses, manages, maintains, and controls overhead power lines located at Fontanet, Indiana, near CSX mile post MP QS 61.47.

7. CSX owns and maintains active railroad tracks in Fontanet, Indiana, adjacent to Duke's power lines.

8. On November 13, 2019, an active overhead Duke power line was located above CSX's railroad tracks (the "Power Line").

9. On November 13, 2019, the Power Line fell onto CSX's railroad tracks (the "Incident").

10. Upon information and belief, the Incident occurred due to Duke's failure to properly construct, inspect, maintain, manage, operate and/or control the Power Line.

11. As a direct and proximate result of the Incident, CSX incurred significant damages to three CSX electric bungalows as well as other railroad crossing signal-system assets.

12. In addition, as a direct and proximate result of the Incident, CSX was unable to make use of its tracks or certain equipment for a period of time.

13. CSX incurred significant costs associated with labor and materials required to remediate the damages to three CSX electric bungalows as well as other railroad crossing signal-system assets, in an amount in no less than \$75,000.

CAUSES OF ACTION

COUNT I **NEGLIGENCE**

14. CSX incorporates all preceding paragraphs as if fully set forth herein.

15. At all times relevant and/or prior to November 13, 2019, Duke had exclusive control and management of the Power Line and the manner of the operations of the Power Line.

16. As an electric power holding company, Duke is responsible for maintaining, managing, inspecting, and making repairs to its power lines to ensure they do not cause injury, harm, and/or damage to adjacent property owners such as CSX.

17. Duke owed a duty of care to property owners, such as CSX, to properly maintain, inspect, manage, and/or repair its overhead power lines in a reasonably safe working order in a way that would not cause injury, harm, and/or damage to adjacent properties.

18. Notwithstanding the reasonable foreseeability that an improperly inspected, maintained, and/or repaired overhead power line could fall causing significant damage to adjacent property, Duke failed to take the necessary precaution to prevent such an occurrence.

19. Duke breached its duty by failing to properly inspect, maintain, repair, and/or have the appropriate safeguards put in place to prevent the Power Line from falling onto CSX's tracks and/or adjacent property.

20. The Power Line would not have fallen onto CSX's railroad tracks but for the negligence of Duke in the construction, inspection, maintenance, management, operation and/or control of the Power Line.

21. Duke knew or should have known of the defective condition of the Power Line.

22. As a direct and proximate result of the Incident, CSX incurred significant damages to three CSX electric bungalows as well as other railroad crossing signal-system assets.

23. In addition, as a direct and proximate result of the Incident, CSX was unable to make use of its tracks or certain equipment for a period of time.

24. CSX incurred significant costs associated with labor and materials required to remediate the damages to three CSX electric bungalows as well as other railroad crossing signal-system assets as a result of the Incident.

25. CSX's damages were caused by the negligence of Duke that can be referred to and/or assumed under the doctrine of *res ipsa loquitur*.

26. As a direct and proximate result of Duke's breach of its duties and failure to properly maintain overhead power lines within Duke's exclusive possession and control, CSX was damaged in an amount no less than \$75,000.

WHEREFORE, plaintiff CSX Transportation, Inc., respectfully demands that judgment be entered in its favor and against defendant, Duke Energy Indiana, LLC, in an amount no less than \$75,000, plus prejudgment interest, costs, and attorneys' fees, together with any such other relief as the Court deems just and proper.

Respectfully submitted,

KEENAN COHEN & MERRICK P.C.

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